

REMARKS

The above-identified application is United States application serial number 10/714,276 filed on November 14, 2003. Claims 1-12 and 29-39 are pending in the application and are rejected. Applicant respectfully traverses these rejections.

Rejection of Claims Under 35 USC 101

Claims 1-12 and 29-39 are rejected under 35 U.S.C. 101 as being directed to patent ineligible subject matter. Applicants note that "the machine or transformation test" of the case cited by the Examiner (*In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008)) as being the exclusive test for subject matter eligibility of a process was overruled on June 28, 2010 by the Supreme Court. *Bilski v. Kappos*, 561 U.S. ____ (2010). The court in *Bilski v. Kappos* did not articulate a test to be used to determine whether a process claim recites patent-eligible subject matter. The court did, however, cite *Diehr* for the proposition that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection. See *Diamond v. Diehr*, 450 U.S. 175, 187 (1981). Since the method claims in the present application are not merely an abstract idea, law of nature, or mathematical formula, removal of the rejection of claims 1-12 and 29-39 under 35 U.S.C. 101 is respectfully requested.

CONCLUSION

Applicant believes the application, including claims 1-12 and 29-39, are in form for allowance and a notice to that effect is solicited. In the event it would facilitate prosecution of this application, the Examiner is invited to telephone the undersigned at (949) 350-7301.

I hereby certify that this correspondence is being transmitted to the USPTO, on the date shown below:

/Mary Jo Bertani/
(Signature)

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July 6, 2010
(Date)

Respectfully submitted,

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